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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ROBIN ADCOCK, et al.,

Plaintiffs and Appellants,

v.

THE JAMESBURG SCHOOL, INC.,

Defendant and Respondent.

H041537

(Monterey County

Super. Ct. No. M117972)

Appellants Robin Adcock and Brad Joseph Dubin seek review of an order setting aside a default and default judgment that had been entered against respondent The Jamesburg School (Jamesburg or the School). Appellants contend that the order was an abuse of the trial court's discretion because there was no evidence supporting its finding of extrinsic fraud or extrinsic mistake. We will affirm the order.

Background

The parties present widely divergent accounts of the history of their dispute. According to declarations from Jamesburg board members, the school began in the early 1970s as a one-room schoolhouse. In 1976 the School purchased a 40-acre property, subdivided it, and sold all but 10 acres, including one parcel to Stan Semmel. In the 1980s Jamesburg began focusing on adult education and serving as a community center for residents of the area.

From August 2000 to October 2011, while classes and community events continued at the School, appellants lived on the property, serving as resident caretakers.

According to appellants, however, they were never given permission to use the property. Nevertheless, they claimed, they “poured an endless amount of time, effort, and loving care into the property, making it obvious to any passerby that the property is ours.” Appellants further averred that they had never allowed others to use the property, while witnesses for the School declared that appellants were commonly known throughout the community as the “invited caretakers” of the Jamesburg property. Finally, appellants declared that they paid all of the property taxes from December 2000 forward.

Natasha Eisman, a resident of the Jamesburg community since 1986, had recommended appellants for the caretaker position, addressing her endorsement to Semmel, who she believed was then a board member. Upon their arrival on the school grounds, the community helped appellants set up their yurt and donated domestic equipment, while Eisman herself bought a “ ‘weed w[h]acker’ ” for the school, “to help with [appellants’] caretaking of the property.”

Amakua Ortman, a current board member and child of a board member and founder, recalled appellants’ having referred to themselves as the caretakers of the School and heard community members refer to appellants as caretakers in their presence, without correction. Ortman had personally heard Semmel and appellants orally agree that in exchange for permission to reside on the school grounds, appellants would pay the property taxes and perform maintenance and caretaking duties on the property.¹ Ortman had also observed board members assist appellants in the construction of a cabin on the property, with the understanding that the cabin would be for the good of the School.

Pauline Bryan, a community member and dance class teacher since 1998, knew appellants “quite well,” having taught Adcock, attended the birth of their oldest child, and babysat for them regularly. Appellants had been introduced to Bryan as the caretakers of

¹ The court did not rule on appellants’ hearsay objection to this statement in Ortman’s declaration.

the property, and they appeared to retain that position throughout the entire period they lived there. She had never asked appellants for permission to continue teaching her dance classes throughout appellants' presence there, as they took place "with the knowledge and permission of the Board." The classes were open to the public, and Bryan never saw any of the students ask either of the appellants for permission to attend the classes.

Bryan had been aware that appellants were submitting grant applications on behalf of the School. On one occasion Adcock asked Bryan to write a thank-you note for a grant that had been made to the School and used to improve the School grounds. Bryan complied. Jamesburg submitted a copy of the grant announcement from the donor, addressed to "R[a] & Brad Dubin, Caretakers, Jamesburg School, Inc." The School also produced a copy of a document describing the school's purpose, activities, and projects and requesting continued donor support. While represented as being from the School, the document was signed by "Ra & Brad Dubin, proud Caretakers of the Jamesburg School, Inc."

Relations between appellants and Jamesburg deteriorated in the summer of 2011 when appellants refused others' access to the property. Concerned about retaliation, appellants vacated the property in October 2011.

Appellants filed this action on May 31, 2012, claiming title to the property by adverse possession. On July 2, 2012 the complaint was personally served on Semmel, the person designated as Jamesburg's agent for service of process. On August 3, 2012, appellants requested entry of default. After a hearing on October 21, 2013, the court entered judgment for appellants, deeming them owners of the property in fee simple.

On June 16, 2014, Jamesburg moved to set aside the judgment and requested leave to file a cross-complaint. Citing Code of Civil Procedure section 473.5, the School asserted that it had received no notice of the litigation in time to defend itself; that the default judgment resulted from extrinsic fraud or extrinsic mistake; and that when it

learned of the judgment it acted diligently to set it aside. In the accompanying declarations from Jamesburg board members, its president, and its vice-president, all stated that they had not learned of the action until late April of 2014.

On July 31, 2014, after receiving the parties' declarations along with written and oral argument, the court granted Jamesburg's motion and set aside the default judgment. The court made its ruling according to its "inherent equitable powers," having found that Jamesburg's failure to appear and defend the action "resulted from extrinsic fraud or mistake." The court further found that Jamesburg had lacked actual notice of the action. The court accordingly granted Jamesburg leave to file an answer to the complaint as well as a cross-complaint. This timely appeal followed.

Discussion

Contrary to appellants' representation of the court's ruling, the final order was based in part on the lack of actual notice to Jamesburg, in accordance with Code of Civil Procedure section 473.5. The court specifically found that "Defendant had no actual notice of the existence of this action in time to appear and defend, that Defendant acted diligently in bringing the motion to set aside, and that Defendant has established that it possesses meritorious defenses to the claims alleged." Nevertheless, because neither party addresses this theory on the merits, we will direct our analysis to the trial court's additional finding that "extrinsic fraud or mistake" justified the application of equity to relieve Jamesburg from the default judgment.

When, as here, the six-month time for relief under Code of Civil Procedure section 473, subdivision (b) has expired, a party may call upon the court's inherent equitable powers to vacate a default and default judgment on the ground of extrinsic fraud or mistake. "Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding. [Citation.] Examples of extrinsic fraud are . . . failure to give notice of the action to the

other party, and [persuading] the other party not to obtain counsel because the matter will not proceed (and then it does proceed). [Citation.] The essence of extrinsic fraud is one party's preventing the other from having his day in court.' ” (*Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300, quoting *City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067; *Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290.)

Extrinsic mistake, on the other hand, is “a term broadly applied when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits. [Citations.] ‘Extrinsic mistake is found when [among other things] . . . a mistake led a court to do what it never intended’ ” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981 (*Rappleyea*)); *Bae v. T.D. Service Company* (2016) 245 Cal.App.4th 89, 97-98 (*Bae*).) To obtain relief on this ground, “ ‘one must satisfy three elements. First, the defaulted party must demonstrate that it has a meritorious case. Second[], the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action. Last[], the moving party must demonstrate diligence in seeking to set aside the default once . . . discovered.’ [Citation.]” (*Rappleyea, supra*, at p. 982.)

“We review a challenge to a trial court’s order denying a motion to vacate a default on equitable grounds as we would a decision under section 473: for an abuse of discretion.” (*Rappleyea, supra*, 8 Cal.4th at p. 981.) In asserting such abuse, appellants essentially dispute the sufficiency of the evidence supporting the finding of “extrinsic fraud or mistake.” They take issue with the court’s failure to identify the conduct it believed constituted extrinsic fraud or mistake, which they believe reflected its uncertainty about the reason for Jamesburg’s having been uninformed about the action. In appellants’ view, there was no evidence of either extrinsic fraud or extrinsic mistake, and the trial court therefore abused its discretion by merely speculating about the cause of Jamesburg’s failure to appear.

Appellants neglect to mention, however, that in reviewing an order denying a motion for relief from default or a default judgment, an appellate court “will not disturb the trial court’s factual findings where they are based on substantial evidence.” (*Warren v. Warren* (2015) 240 Cal.App.4th 373, 377. “It is the province of the trial court to determine the credibility of the declarants and to weigh the evidence.” (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 828.)

Appellants compare this case to *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, where the First Appellate District, Division Three, reversed an order setting aside a default judgment because the defendant had received adequate notice and had not demonstrated extrinsic fraud or mistake justifying its failure to respond to the summons and complaint. In that case, however, the corporate defendant had never denied having actual knowledge of the lawsuit against it. It simply took no action either to challenge service of process or to oppose the default and default judgment, which it knew were being sought by the plaintiffs. Instead, the defendant “simply ignored all of [the plaintiffs’] attempts to notify it of the pendency and progress of the action, and [it] offers no good excuse for its failure to appear and defend. Rather, it seems Car-Lene was willing to take a calculated risk that [the plaintiffs] would not pursue the matter and would not act on their express intent to obtain a default judgment and execution thereof.” (*Id.* at p. 316.)

Gibble is plainly distinguishable. Here the court clearly found that the board members of Jamesburg had not received notice of appellants’ action. The court could not affirmatively specify whether this lack of notice was due to extrinsic fraud or to extrinsic mistake, but it inferred that one of those circumstances existed, because the School itself was not at fault. We reject appellants’ repeated effort to cast the court as uncertain, dependent on speculation about the cause of Jamesburg’s failure to appear and “admitting” that the lack of notice was “inexplicable.” These mischaracterizations are

drawn from the court's expressed "initial view" at the hearing, not from its ultimate ruling.

Similarly inapposite is *Aheroni v. Maxwell* (1988) 205 Cal.App.3d 284, a Second Appellate District case in which the majority found insufficient evidence of extrinsic fraud to sustain the lower court's order setting aside the default and default judgment. There, as in *Gibble*, the defendant was aware of the action; he had even filed a "tentative" answer. When the answer was rejected, the defendant was given an opportunity to file an appropriate answer, but he failed to do so despite an extension of time. The trial court accepted the defendant's argument that extrinsic fraud occurred when the plaintiff assured the defendant that he had an extension of time to file an answer. But the appellate majority rejected this theory, because the defendant had not claimed, nor was there sufficient evidence, that he had relied on the plaintiff's assurances when he failed to file an answer. On the contrary, his application for an extension indicated to the majority that he "ignored plaintiff's assurance that an answer had been filed and no default would be taken." (*Id.* at p. 291.) Nothing in the facts of *Aheroni* compels rejection of the court's ruling in this case.

Contrary to appellants' oblique suggestion, the order in this case is not fatally deficient simply because it did not articulate the particular circumstances justifying its exercise of its equitable power to set aside the default judgment. Appellants cite no statutory or judicial authority requiring a court to articulate the specific basis of its ruling, whether extrinsic mistake or extrinsic fraud. "Although the record does not disclose why the court set aside the default and default judgment, we are obliged to uphold that discretionary ruling, 'if . . . correct on any basis, regardless of whether such basis was actually invoked.' [Citation.]" (*Bae, supra*, 245 Cal.App.4th at p. 98.) Here the trial court could have, consistent with a finding of fraud, credited the School's suggestion that Semmel, a "close personal friend" of appellants, deliberately failed to disclose and pass along to the School the summons and complaint he had received as the ostensible agent

for service of process. According to the School, Semmel not only concealed the service but later denied receiving service and refused to cooperate in the School's investigation into the facts. Alternatively, the court could have attributed the lack of notice to extrinsic mistake, through the board's misguided reliance on Semmel to act as its agent for service. In either event, appellants have not shown that the court drew an improper inference from the facts before it.

The trial court further found that Jamesburg had acted diligently in bringing its motion to vacate and that its defenses were meritorious. Appellants do not question either of these findings; hence, we need not reach them in this appeal.

Disposition

The order is affirmed.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.